

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:19CR27-2
(Judge KleeH)

THOMAS ARTHUR CICALEASE,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 95],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On July 16, 2020, the Defendant, Thomas Arthur Cicalese ("Cicalese"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count Three of the Superseding Indictment charging him with Possession with Intent to Distribute 50 grams or more of Methamphetamine in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(viii). Cicalese stated that he understood that the magistrate judge is not a United States District Judge, and Cicalese consented to pleading before the magistrate judge. This Court referred Cicalese's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and

USA v. CICALESE

2:19-CR-27-2

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CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 95],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Cicalese's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Cicalese was competent to enter a plea, that the plea was freely and voluntarily given, that Cicalese was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 95] finding a factual basis for the plea and recommending that this Court accept Cicalese's plea of guilty to Count Three of the Superseding Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Cicalese nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 95], provisionally **ACCEPTS** Cicalese's guilty plea, and

USA v. CICALESE

2:19-CR-27-2

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CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 95],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

ADJUDGES him **GUILTY** of the crimes charged in Count Three of the Superseding Indictment.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Cicalese, and prepare a presentence investigation report for the Court;

2. The Government and Cicalese shall each provide their narrative descriptions of the offense to the Probation Officer by **August 14, 2020**;

3. The presentence investigation report shall be disclosed to Cicalese, his counsel, and the Government on or before **October 13, 2020**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **October 27, 2020**;

USA v. CICALESE

2:19-CR-27-2

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CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 95],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **November 6, 2020**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **November 16, 2020**.

The magistrate judge remanded Cicalese to the custody of the United States Marshals Service.

The Court will conduct the **Sentencing Hearing** for Cicalese on **Monday, November 23, 2020, at 1:00 P.M., at the Elkins, West Virginia** point of holding court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: August 5, 2020

/s/ Thomas S. Klee
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE